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SUBJECT: SAUDI ARABIA SPECIAL 301 REVIEW: POST INPUT

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- [B. RIYADH 30](#)
- [C. RIYADH 40](#)
- [D. RIYADH 83](#)
- [E. 2008 RIYADH 1271](#)
- [F. 2008 RIYADH 1435](#)
- [G. 2008 RIYADH 1630](#)
- [H. 2008 RIYADH 1663](#)
- [I. 2008 RIYADH 1682](#)
- [J. 2008 RIYADH 1870](#)

Summary

¶1. Despite continuing deficiencies, Saudi Arabia improved its protection of intellectual property rights (IPR) in the preceding year. The Violations Review Committee has become more productive and transparent under new leadership. The SAG offered a counter-proposal to USTR's Exclusive Marketing Rights Proposal for protecting the IPR rights of certain orphan pharmaceutical products and reported 100% compliance in using licensed software for its PCs. The SAG also continues to eagerly participate in and request training from the USG to improve its capacity to protect and enforce IPR, and has scheduled a conference on IPR protection and enforcement to take place in Riyadh in April 2009, to include speakers from the USPTO and similar agencies from the European Union. In February 2008, the Saudi IPR Committee agreed to establish an IPR Coordination Group. Although no group has nominally been established yet, the SAG met regularly with USG representatives and private industry rights holders, sometimes simultaneously, to discuss IPR protection and enforcement.

¶2. However, industry losses due to IPR infringement remain significant, and industry groups express frustration about IPR enforcement. The Violations Review Committee (VRC) at the Ministry of Culture and Information (MoCI) has begun to provide a publicly accessible website with all information for ongoing IPR cases. The MoCI has also raided warehouses and shops which produce counterfeit material, and police and customs officials have confiscated hundreds of thousands of counterfeit goods from pharmaceuticals to optical media. The MoCI proactively investigated and shut down retail sites which sell infringing goods and cafes which profit from pirated cable signals and internet connections. However, at the time of this report, the SAG has failed to enact severe deterrent penalties in the form of high fines or imprisonment for IPR violators.

¶3. Post recommends that Saudi Arabia remain on the Watch List pending an out-of-cycle review to monitor progress on near-term goals. Saudi Arabia made substantial efforts in implementing its IPR obligations during the preceding year and continues to seek opportunities to cooperate with the USG to work to overcome its deficiencies.

Copyright enforcement

¶4. Despite recent improvements, prosecution and punishment of copyright violators remains the most deficient area in the SAG's intellectual property rights (IPR) regime. Primary responsibility for ensuring copyright protection lies with the Ministry of Culture and Information (MOCI), whose responsibilities include the investigation of fraudulent activity, as well as the initial judicial review of all copyright violation cases. Rights holders criticize the MOCI's continued failure to apply effective deterrent penalties to IPR violators. However, in response to complaints about the lack of transparency in IPR cases the MoCI created and is making case information available on a publicly accessible website.

¶5. The MOCI has also proactively investigated and shut down retail sites which sell infringing goods and cafes which use pirated internet and cable signals. Severe resource constraints hamper the MOCI's ability to make rapid progress on these issues, but significant headway has been made. For example, stories of the raids on warehouses, vendors, and cafes have been published in the local media as part of a "name-and-shame" campaign. Additionally, vendors that are closed are locked and covered in signs stating clearly "Closed by the Ministry of Culture and Information for Intellectual Property Infringement." In 2008, 12,340 stores were inspected up 40% from 2007, 5930 raids were conducted, and 2,869,622 units of counterfeit material were confiscated and destroyed, according to MOCI sources. In January 2009,

the Ministry of Culture raided a warehouse and discovered 800,000 pirated PlayStation games.

¶6. Initial judicial review of all copyright violation cases is conducted by the MOCI's Violations Review Committee (VRC), a semi-judicial authority that has the ability to issue fines of up to 100,000 Saudi Riyals or refer more serious cases to the Board of Grievances. Though it continues to be staffed by members who hold other full-time jobs at the Ministry, the VRC's productivity increased dramatically upon the appointment of a new Chairman in September 2007. While industry sources told post the VRC issued 13 rulings in 2006, the VRC reported that it had issued 275 rulings under its new leadership. In 2008 the VRC received 485 complaints, of these 263 violations were referred to the Committee, 225 were processed, and 50 are still ongoing. According to industry sources, the new Chairman is also generally willing to consult with rights holders. In order to expedite cases, the MOCI also committed to establish regional VRC's in Dhahran and Jeddah. The Jeddah VRC was launched in January 2009. Additionally, in 2008 the MOCI hired 80 new employees as inspectors and purchased 15 new vehicles to be used in the inspections.

¶7. Despite these marked improvements at the VRC, the failure to issue effective deterrent penalties remains a problem. The maximum fine issued by the VRC for an IPR violation was 100,000 Saudi Riyals (approximately \$26,666.00 USD). Post is unaware of any Saudi court issuing a prison sentence for an IPR violation, although Saudi legislation now provides for such a penalty.

¶8. Following King Abdullah's issuance of a royal order directing government ministries to legalize their software use following the International Intellectual Property Alliance's visits to the Kingdom in 2006 and 2008, the SAG now claims that it has 100% compliance in using licensed software in government ministries. However, industry maintains that the push for legalization has enjoyed only modest success. The SAG disputes industry's estimates of its rate of legal software use. It asked all government ministries to investigate and report back whether their computers ran only licensed software. SAG officials report that this study demonstrated over 90% of government PCs run

only legal software. Industry dismisses this self-certification as inadequate and inaccurate. Microsoft believes that legalization problems persist for bureaucratic and budgetary reasons, and suggests that the SAG designate funds for all ministries to use to legalize rather than addressing the issue ministry by ministry or pooling the ministries' technology budgets together.

¶9. The MOCI in 2008 began populating the "E-gate", a publicly accessible website with information on cases before the Violations Review Committee, both pending and closed. In 2008 140 cases were completely posted to the website, and in 2009 the postings are expected to exceed 400 cases.

Patent enforcement

¶10. The SAG offered a counter-proposal to USTR's Exclusive Marketing Rights Proposal (EMR Proposal) in February 2008. USTR proposed that the SAG grant temporary exclusive marketing rights to pharmaceutical products that lost patent protection when Saudi Arabia transitioned to a new TRIPS-compliant patent law in 2004 through such products' patent expiration in the US or the European Union (whichever is sooner). Products that had applications for patents pending under the old law (and enjoyed patent protection while their applications were pending) were reviewed as new cases under the new law. These products were then denied patents because the SAG determined that they were not "novel" because they had been publicly patented in other jurisdictions more than a year before their cases were considered in Saudi Arabia. While industry was reluctant to provide a definitive list of these products for fear of inadvertently omitting a product, the SAG required such a list to consider the EMR Proposal, thus USTR forwarded a list of more than 70 products compiled by industry in October 2007.

¶11. The SAG analyzed this list of more than 70 products and winnowed it down to about 40. It accomplished this by eliminating both products for which patent applications were never filed or were dropped or refused because of a failure to pay fees or provide requested information, and products that were granted patents or were still being considered for patents. The SAG further proposes excluding products for which a generic is or becomes available in the US, the European Union or the Kingdom, and limiting exclusive marketing rights to those products that applied to register with the Saudi Ministry of Health (MOH) under the old patent law. This counter-proposal seems only to regard listed pharmaceuticals rather than defining a category, and the officials presenting the counter-proposal made it clear that any agreement would have to be approved by the Council of Ministers. USTR reviewed the counter-proposal and submitted a response on April 2, 2008, which has not yet received a response.

¶12. To post's knowledge, Lipitor is the only pharmaceutical in the category described in Paragraph 8 for which the MOH has subsequently licensed manufacture of a generic equivalent. Pfizer, Lipitor's manufacturer, is appealing the decision to deny Lipitor a patent, and argues that the MOH's issuance of a license to manufacture generic Lipitor violates Saudi Arabia's WTO obligations. Under Saudi Arabia's Protocol of Access to the WTO, the Saudi Arabian representative stated that if a pharmaceutical patent application was pending, the MOH would not register a generic, unless there was no possibility that the patent would be granted. In discussions with post SAG officials have agreed in principle that a license to produce a generic version of a pharmaceutical should not be issued while the patent rejection of that precise pharmaceutical is being appealed, but the license to manufacture a generic equivalent of Lipitor has not been revoked. Lipitor's status in the Kingdom would not seem to be remedied by the SAG's counter-proposal because the generic is available in Saudi Arabia.

----- Legislation and international agreements -----

¶13. There is agreement among Saudi officials and rights holder groups that current IPR laws provide the necessary authority for the SAG to investigate arrest and penalize IPR violators. Post no longer considers Saudi legislation an impediment to IPR enforcement. However, Saudi Arabia's 2007 Special 301 Initiative Action Plan recommended that Saudi Arabia ratify and implement the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty (the WIPO Treaties). SAG officials met with WIPO in Geneva in October 2007 and are still looking for a legal advisor to explain the content of the WIPO Treaties and what the SAG's responsibilities would be if it were to ratify them.

¶14. In March 2008 Saudi Customs issued a circular requiring all foreign importers, as of February 1, 2009, to certify the origin of their goods with a stamped, non-removable "certificate of origin" on the package of the item and the shipping container of the items. This certification is intended to protect the integrity of items with regional designations as well as certify their legitimacy and prevent the importation of fraudulent goods. Saudi Customs no longer accepts imported products lacking this certification.

----- Training and cooperation -----

¶15. Improving the SAG's performance on transparency and enforcement will require building knowledge and expertise across Saudi ministries in officials ranging from customs and copyright inspectors to patent examiners and judges. While Saudi nominees have attended a number of week-long US Patent and Trademark Office (USPTO) academies in Washington, D.C. in the preceding year, SAG officials tell post that most of their employees that speak English well have already completed USG training. They are eager for their employees that only speak Arabic to benefit from this professional development opportunity as well.

¶16. SAG officials demonstrated this desire during a Spring 2008 visit to Riyadh by officials from USTR, USPTO and the Copyright Office. These USG officials met with Saudi officials from the MOCI, the Ministry of Commerce and Industry, the Customs Authority, the King Abdulaziz City for Science and Technology and the Board of Grievances. Each of these institutions seized the opportunity to explain their role in protecting and enforcing IPR in the Kingdom, and to provide detailed, specific input regarding self-funded training programs they believe the USG can offer to enhance their ability to protect and enforce IPR. Delegation members are now designing proposals for various Saudi-specific, Arabic-language training programs that should pay dividends in enhanced IPR enforcement and protection in the Kingdom. The Saudi IPR Committee also agreed to establish an IPR Coordination Group during this visit. An IPR Coordination Group, as proposed in Saudi Arabia's 2007 Special 301 Initiative Action Plan, should include representatives of the USG and the SAG, as well as private industry rights holders, and meet regularly to discuss IPR protection and enforcement. Although no group has nominally been established yet, the SAG met regularly with USG representatives and private industry rights holders, sometimes simultaneously, to discuss IPR protection and enforcement.

----- Public awareness as a priority -----

¶17. The SAG is making substantial strides in promoting public awareness of IPR violations as a crime, and consumer protection. For example, in June 2007 the Ministry of Commerce and Industry in conjunction with the WIPO and the Islamic Development Bank (IDB) hosted a regional seminar on

Intellectual Property and Technology Transfer. In March, 2008, the Saudi Publishers Association launched the first Saudi Intellectual Property Rights Conference. In October, 2008, the SAG hosted, along with the Arab League, the First Arab Consumer Protection Forum in Jeddah, attended by over 1000 participants.

¶18. The Ministry of Culture and Information also publishes stories of raids in the local press as a part of a name-and-shame campaign, and to further publicize that those businesses selling pirated goods will be targeted by the MoCI and the Ministry of the Interior. During a January 2009 warehouse raid, the Deputy Minister of Culture and Information invited local TV stations and press to observe and document the raid. The MOCI has also published a booklet guide to Copyrights Law and Enforcement procedures and are in the process of translating the guide into English and French.

Recommendation

¶19. Post recommends that Saudi Arabia remain on the Watch List pending an out-of-cycle review to monitor progress on near-term goals. Saudi Arabia made substantial efforts in implementing its IPR obligations during the preceding year and continues to seek opportunities to cooperate with the USG to work to overcome its deficiencies.
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